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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 05/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

09/500,473

KEMP ET AL.

Examiner

Art Unit

Robert Madsen

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 25 March 2003.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-13 and 39-41 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-13 and 39-41 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,5,6.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other:

DETAILED ACTION

1. Applicant's election without traverse of Group I claims 1-13,39-41 with the species of human food/beverage in Paper No. 8 is acknowledged. Claims 14-38,42-78 have been cancelled.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4,6,7,9,11-13,39-41 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Basel et al. (US 436197). See Column 1, lines 10-40, Column 2, line 57 to Column 3, line 44, and Column 5, line 30 to Column 6, line 1, wherein the carrier is water.
4. Claims 1,2,5,6,12,13,39,40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Braun et al. (US 4830862). See Column 5, line 5 to Column 7, line 35.

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5. Claims 1,2,5,6,12,13,39-41 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nasu (US 4983409). See Column 2, line 14 to Column 6, line 32 and claims.

6. Claims 1-4,6,7,9, 11-13,39,40,are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Theron et al. (US 4064284). See Abstract, Column 2, line 3 to Column 3, line 29.

7. Claims 1,5,6,12,13,39,40,are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kearns et al. (EP 0584976 A2). See Abstract, Page 3, line 2 to Page 4, line 20.

8. Claims 1-4,6, 7-9,11-13,39,40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tenmiyo et al. (JP35179436 A). See English Abstract.

9. Claims 1,2,12,13,39-41 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Jacobson et al. (US 6024994). See Column 2, line 27 to Column 4, line 7.

10. Claims 1-9,11-13,39,40 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Frielich et al. (US 6086927). See Column 2, lines 20-50, Column 3, line 10 to Column 4, line 28.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frielich et al. (US 6086927).

13. Although Frielich et al. teach sulfuric acid added to calcium hydroxide, Frielich et al. are silent in teaching the range of 1 mole of sulfuric acid to every 0.1-0.5 moles of calcium hydroxide per se. However, Frielich et al. do teach the level of calcium hydroxide added depends on the final product and the level of calcium fortification desired and the amount of sulfuric acid added depends on the desired flavor and balance of natural fruit flavors (Column 3, lines 10-25 and Column 3, line 33 to Column 4, line 4). Therefore to add any particular mole ratio of sulfuric acid to calcium hydroxide would have been an obvious result effective variable of (1) the desired level of calcium and (2) the desired flavor.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (703) 308-

0061.

Robert Madsen 
Examiner
Art Unit 1761
April 30, 2003


STEVE WEINSTEIN
STEVE WEINSTEIN
PRIMARY EXAMINER
for M. Cano

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